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CompTel

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September 7, 1998

Larry Strickling
Common Carrier Bureau
Federal Communications Commission
445 12th Street SW, Room 5-C450
Washington, DC 20554

Re: Implementation of the Local Competition Provisions
Of the Telecommunications Act of 1996 (UNE Remand)
CC Docket No. 96-98

Dear Mr. Strickling:

On August 16, 1999, BellSouth outlined its views with respect to the availability of dedicated transport as an unbundled network element.[1] As explained below, we fundamentally disagree with BellSouth's assertion that dedicated transport should be restricted in *any* manner given current market and regulatory conditions. However, we have also concluded that the Commission's existing definition of dedicated transport *could* be limited if other actions are taken which make alternative facilities more efficient and widespread.

Introduction

As the Commission is well aware, CompTel has been actively engaged in the Commission's UNE remand investigation and its review of the need for unrestricted access to dedicated transport UNEs including the extended link (EEL). CompTel participated in the Commission's August 27th debate on this issue and filed an extensive *ex parte* on August 31, 1999.

The purpose of this *ex parte* is to respond to BellSouth's letter, and to propose the minimum conditions necessary for the Commission to conclude that entrants would not be impaired if the definition of "dedicated interoffice transport" no longer included the link to a competing carrier's premise. Among other conditions, the Commission could

[1] *Ex Parte* letter from Ernest Bush, Jr., Assistant Vice President, BellSouth Telecommunications, to Larry Strickling, Common Carrier Bureau ("BellSouth *Ex Parte*"), August 19, 1999, CC Docket 96-98.

only reach this conclusion if it defines in its place a new UNE commonly referred to as an extended link ("EEL"). The EEL is a fundamental prerequisite to the impairment analysis of both dedicated transport and, as CompTel explained in its earlier *ex parte*, unbundled switching.[2] Unless the EEL is mandated as a separate network element, no limitations on dedicated transport or switching can be considered.

CompTel's members consider the availability of an EEL one of their highest priorities in this UNE Remand proceeding. An EEL enables a new competitor to expand its footprint in order to serve customers connected to distant incumbent local exchange carrier ("ILEC") central offices where the requesting carrier has not established a collocation arrangement. In addition, an EEL permits a carrier to make fuller utilization of its network investment by constructing the most efficient network architecture consistent with today's technology, rather than duplicating the ILECs' current deployment of central offices. Finally, the EEL conserves scarce collocation space for those uses that require collocation to be operational, such as DSL-based advanced data services which require DSLAMS to be located within certain distance parameters.

The EEL is so critical to the expansion of local competition that the Commission can and should define an EEL as a separate network element to be unbundled by the ILECs. Although an EEL, like loops/sub-loops and shared transport, includes functionalities that should also be separately unbundled, the Commission clearly has discretion to define the EEL itself as a UNE. The Supreme Court rejected as "impossible to credit" the ILECs' argument that network elements were limited to physical pieces of the network; instead, the Court upheld Commission rules mandating "services" (OS/DA), "systems" (OSS) and functionalities (vertical switching features) as UNEs.[3] Moreover, the Court held that Section 251(c)(3) "does not say, or even remotely imply, that elements must be provided only in this fashion [*i.e.*, in discrete pieces] and never in combined form."[4] Thus, the EEL satisfies the statutory definition of a network element because it is a feature, function or capability provided by means of the ILECs' facilities or equipment.

In the past few weeks, however, the largest ILECs have raised concerns over the potential impact of an EEL on existing special access revenues. Relying on this perceived need to protect special access, the ILECs have attempted to implement restrictions on EELs and other dedicated network elements such as loops and transport. CompTel opposes *any* use restrictions on EELs or any other network elements. Use restrictions are inconsistent with Section 251(c)(3) of the Act and with the Commission's rules implementing Section 251. Moreover, use restrictions force CLECs to endure ILEC gatekeeping obstacles and inevitably invite "restriction creep" as the ILECs immediately would attempt to expand any restriction to new areas in order to protect even more

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[2] *Ex Parte* letter from Carol Ann Bischoff, Executive Vice President and General Counsel, CompTel, to Larry Strickling, Chief, Common Carrier Bureau, August 19, 1999, CC Docket No. 96-98.

[3] *AT&T Corp. v. Iowa Util. Bd. et al.*, 119 S. Ct. 721, 734 (1999).

[4] *Id.* at 737; *see also*, SBC v. FCC, 153 F.3d 597 (8th Cir. 1998) (upholding shared transport as a network element because the Act "expressly includes both individual network facilities and the functions which those facilities provide, either individually or in consort.").

revenues from competition. For these reasons, CompTel has opposed the ILECs' arguments and opposes the EEL restrictions proposed on September 2, 1999 by Bell Atlantic and three of its competitors.

As we explain below, however, we believe that Commission can define the EEL UNE in a manner that will partially reduce the impairment question as it relates to entrance facilities. The Commission should define an EEL to extend from a customer's premise to a carrier's collocation arrangement. The availability of an EEL UNE would further the Commission's objectives by increasing the potential traffic volumes needed to justify collocation and the competitively provide entrance facilities that would exist beyond them. The EEL – as well as the elimination of any use restriction on all remaining transport elements – would pave the way for a Commission finding that entrants would not be impaired by a redefinition of the dedicated transport UNE to exclude the entrance facility component.

Dedicated Transport Between ILEC End Offices

BellSouth's evaluation of the dedicated transport market begins by distinguishing between dedicated transport within its network (i.e., between BellSouth central offices) and dedicated transport between a central office designated as a "serving wire center" (SWC) and a competing carrier's "point of presence" (POP).[5] At least with respect to this framework, we agree that it is useful to separately consider traditional "interoffice" transport facilities from the so-called "entrance facility." As used by CompTel, however, the term "entrance facility" refers to *any* ILEC-provided connection between an ILEC SWC and another carriers' network, irrespective of the tariff used to order the capacity today. As CompTel explained in its August 31st *ex parte*, the historic labels of CLEC and IXC are already obsolete, replaced by the emerging class of Integrated Communications Providers (ICPs) that CompTel represents.[6] We agree to evaluate these links separately, however, not because our fundamental *conclusion* regarding the UNE-status of these facilities differs, but because the *reason* for this conclusion is different. As explained below, CompTel sees no evidence that dedicated transport between ILEC central offices could be removed from the list of UNEs at this time; however, under certain conditions it may be appropriate to exclude entrance facilities.

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[5] The SWC is the conventional tariff term to designate the EO from which BellSouth (or other ILEC) connects to a competitive carrier. In historical terms, the "competitive carrier" was most typically an interexchange carrier whose network presence in a LATA was defined in traditional tariffs as a "point of presence," or POP.

[6] In this regard, it is important to note that the BellSouth *Ex Parte* is premised on a fundamental misconception that all "entrance facilities" are dedicated to providing exchange access service only (page 1). Such a claim is only true as a meaningless *non sequitor* – that is, because these facilities are ordered from the ILEC's access tariff, the tariff itself *defines* the facilities as providing exchange access, without regard to the services and uses to which the facilities are actually put. Of course, the only *reason* that these facilities are ordered from an access tariff is that the access tariff is the only means traditionally available (and remains the only *reliable* means) to obtain such circuits. In fact, however, these facilities provide a range of services, including local, data and long distance.

With respect to the dedicated transport links between ILEC offices, BellSouth claims that "[a]ll parties to this proceeding appear to agree that dedicated transport is a point-to-point service that is available or not between particular points."[7] This statement, however, ignores the CompTel's comments that explained that entrants do not view dedicated transport as a discreet commodity. The mere presence of a skeletal interoffice network – i.e., a network that provides fractional geographic coverage compared to the ILEC -- does not lessen an entrant's impairment relative to the ILEC's interoffice network.

BellSouth's own *ex parte* acknowledges that the "market footprint" of alternative facilities is only a small fraction of its network,[8] but BellSouth then ignores the practical impairment that such limited coverage entails. The following table shows that despite the deployment of CLEC interoffice transport facilities, CLECs have not been able to win significant shares of the switched transport market, even though competition in this market was permitted for several years prior to the 1996 Act:[9]

ILEC	ILEC Market Share
Ameritech	98.1%
Bell Atlantic	90.0%
BellSouth	99.5%
SBC	83.6%
US West	94.8%
GTE	90.2%

The Commission should reject BellSouth's suggestion that impairment does not apply for dedicated interoffice transport within the ILEC network (i.e., between ILEC end offices) simply because a carrier may have collocated its own transmission facilities in that office.[10] The scale economies and ubiquitous footprint of the incumbent network justify defining these facilities as an unbundled network element.

Dedicated Interoffice Transport (Entrance Facilities)

Unlike the traditional interoffice transport discussed above, the issue of impairment with respect to "entrance facilities" is somewhat different. Entrance facilities, as the name suggests, represent an entrant's first point of connection to the

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[7] BellSouth *Ex Parte*, page 7.

[8] According to BellSouth, alternative transport is only "available" in 19% of its wire centers. BellSouth *Ex Parte*, page 7.

[9] Source: 1998 Annual Access Filing. Chart compares Collocated Interconnection Minutes to Total Interconnection Minutes.

[10] CompTel notes that BellSouth has offered no evidence that any of the collocated networks it cites offer practical substitutes to its network facilities. Consequently, even if the *framework* that BellSouth suggests were appropriate (which we believe it is not), the *evidence* that it provides is insufficient to conclude that impairment does not exist.

ILEC network. These facilities exhibit significant economies of scale and, therefore, the entrant's ability to achieve efficient cost levels is heavily dependent upon its ability to aggregate and concentrate its traffic and capacity over these facilities.

The BellSouth *ex parte* argues that the Commission can reach a conclusion regarding impairment by considering only whether an alternative entrance facility is available, without considering at all whether the entrant can efficiently aggregate traffic over that facility so as to be in a position to compete. These two issues, however, cannot be so easily separated. Whether a carrier can justify the self-supply (or competitive provisioning) of an entrance facility, including the fixed costs of establishing a collocation arrangement within its serving wire center, is directly dependent upon how efficiently it can collect and aggregate its transmission requirements onto its entrance facilities.

For an entrance facility to be used efficiently, it must be able to interconnect to each end-office in a LATA, and carry the full complement of traffic without *any* artificial restriction or limitation. The *transmission* efficiency of the entrance facility is determined in the first instance by the *aggregation* efficiency of the transport network used to collect and bring traffic to it. Any policy or restriction that limits the ability of an entrant to use the ILEC's interoffice network to collect traffic will also impair that entrant's ability to achieve the greatest scale benefit from any entrance facility that it installs or obtains from an alternative. Today this ability is impaired by two factors.

First, as CompTel explained in its *ex parte* of August 31st, entrants are today limited in the customers they may serve because no "extended link" (EEL) network element has yet been defined the Commission. An EEL would enable a new competitor to effectively expand its footprint and offer service over a broader area. This increase in "effective range" would increase its traffic volumes, thereby making it more likely that it would achieve the threshold traffic volumes needed to deploy entrance facilities.

Second, there is today a cloud of uncertainty concerning the status of transport facilities used to aggregate or distribute interexchange traffic.[11] To fully utilize a carrier's entrance facilities in the most efficient manner, however, entrants must be able to efficiently load traffic onto every circuit between themselves and the ILEC's end-offices. This capability *must* include traffic that is today labeled "access" if the ICP is to use its local network efficiently and be able to compete with an integrated RBOC in the future.[12] Thus, artificially denying entrants the ability to aggregate any category of traffic reduces both their transport efficiency and their ability to achieve the necessary scale economies on their entrance facilities.

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[11] Third Order on Reconsideration and Further Notice of Proposed Rulemaking, Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, 12 FCC Rcd 12460 (1997), aff'd sub nom. SBC v. FCC, 153 F. 3d 597 (8th Cir. 1998).

[12] See CompTel *ex parte* of 8/31/99.

Proposal

As explained above, CompTel believes that BellSouth's suggestion to restrict the dedicated transport network element – including that portion of the dedicated transport element commonly referred to as an entrance facility -- is without merit at this time. However, CompTel also concedes that, under the appropriate conditions, the factors that today create impairment for entrance facilities could be reduced, and the "dedicated transport UNE" definition (under which entrance facilities currently fall) could be modified accordingly.[13] These conditions include:

* The ILEC has fully implemented the Commissions collocation reform decision, with cageless collocation arrangements being available at state-approved TELRIC-based rates.

* The Commission defines a new UNE – the EEL – that would enable competitive entrants to efficiently serve customers and aggregate their traffic over an entrants' entrance facility. The EEL would extend from the entrance facility termination in the central office (i.e., a collocation arrangement) to the customer premise.

* The Commission determines that all other transport UNEs (shared and dedicated) can be used without restriction, including to carry traffic that has historically been labeled "access traffic". This policy is necessary to enable entrants to efficiently aggregate traffic to its collocation arrangement and "entrance facility" to achieve the necessary scale economies to compete without impairment.

If these conditions are satisfied, then the Commission could redefine its dedicated interoffice UNE to exclude entrance facilities in those end-offices where alternative networks interconnect to carrier networks.

Furthermore, under this approach, it is CompTel's understanding that existing facilities that interconnect through LEC-provided entrance facilities would continue to be provided under their existing tariff until contract terms expire and/or circuits are reconfigured to interconnect with collocated facilities and competitively provided entrance facilities.[14] This result would largely address the ILECs' desire for "revenue

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[13] Of course, anywhere that an RBOC argues that it has no space available for the necessary collocation arrangement to support a competitively supplied entrance facility, the "dedicated transport" definition would need to include this option.

[14] As CompTel has explained previously, the Commission cannot lawfully restrict the services or traffic that a competing carrier intends to offer using network elements. In the absence of a Commission finding that entrance facilities are no longer a UNE, and in accordance with Rule 315(b), CompTel believes that its members have the legal right to convert any circuit provisioned over a combination of transport UNEs, including an entrance facility, without incurring any additional non-cost charges.

stability." Although assuring the ILECs "revenue stability" in this manner is not a legitimate policy objective,[15] this would be one of the consequences of removing entrance facilities from the list of mandatory network elements.

Finally, as entrants obtain alternative entrance facilities, appropriate transition plans will be necessary to migrate tariffed services to non-ILEC entrance facilities. To avoid non-cost charges, the Commission should require that each ILEC file such a transition plan with the Bureau. The plan should be implemented no later than the date upon which an RBOC receives authority in-region, interLATA services in accordance with Section 271 of the Act.

Sincerely,

Carol Ann Bischoff

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[15] CompTel demonstrated in its *ex parte* of 8/31/99 that no universal service support exists in ILEC special access prices.